

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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ALLEN WOLFSON,

Plaintiff,

vs.

RON NUTT and SHERYL NUTT

Defendants,

**ORDER**

Case No. 2:05 CV 874

Judge Dee Benson

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Before the Court is the Report and Recommendation issued by United States Magistrate Judge Paul Warner on August 8, 2007, recommending that Plaintiff's case be dismissed for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and Rule 12. See Fed. R. Civ. P. 12(b)(1), (h)(3). The parties were given ten (10) days to file objections to the Report and Recommendation. On August 20, 2007, Plaintiff filed a "Response to U.S. Magistrate and Modification of Lawsuit."<sup>1</sup> (Dkt. No. 16.)

Having reviewed all relevant materials, including Plaintiff's response and the reasoning set forth in the magistrate judge's Report and Recommendation, the Court agrees with the Report and Recommendation's conclusion that the Complaint currently on file with the Court asserts jurisdiction under 28 U.S.C. § 1331 but fails to allege facts that would support federal question

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<sup>1</sup>Plaintiff's Response was dated and mailed within the 10-day time period, but was not docketed until August 20, 2007. (Pl.'s Resp. at 3-4.)

jurisdiction. While Plaintiff's Response appears to concede that his present complaint lacks subject matter jurisdiction, he attempts to remedy this fatal flaw by claiming that he "meant to assert jurisdiction based on diversity of citizenship and the fact that the lawsuit is for an amount far in excess of 75,000 dollars." (Pl.'s Resp. at 1.) Recognizing that pro se pleadings are to be construed liberally, Ledbetter v. City of Topeka, 318 F.3d 1183, 1187 (10<sup>th</sup> Cir. 2003), this Court will construe Plaintiff's "Objection to U.S. Magistrate and Modification of Lawsuit" as a motion to amend his complaint. Accordingly, Plaintiff is hereby granted leave to file an amended complaint in accordance with Rule 15 of Federal Rules of Civil Procedure.

It is so ordered.

Dated this 13th day of September, 2007



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Dee Benson  
U.S. District Court Judge